

1 HONORABLE RICHARD A. JONES
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RANDALL FONTANA,

Plaintiff,

v.

CITY OF FEDERAL WAY, et al.

Defendants.

CASE NO. C11-998RAJ
ORDER

This matter comes before the court on defendants' motion to set reasonable expert fees. Dkt. # 97. Defendants request that the court order that the deposition fee of \$2,500 for plaintiff's police practices expert, T. Michael Nault, is manifestly unreasonable. *Id.* at 1.

Rule 26(b)(4)(E) provides that unless "manifest injustice" would result, the court must require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery. Fed. R. Civ. Proc. 26(b)(4)(E)(i). The parties have not directed the court to any Ninth Circuit authority to determine what constitutes a "reasonable fee," and the court has found none. District courts in the Ninth Circuit, and in this District, routinely apply a seven factor test: (1) the witness's area of expertise, (2) the education and training required to provide expert insight that is sought, (3) the prevailing rates of other comparably respected available experts, (4) the nature, quality,

1 and complexity of the discovery responses provided, (5) the fee actually charged to the
 2 party who retained the expert, (6) fees traditionally charged by the expert on related
 3 matters, and (7) any other factor likely to assist the court in balancing the interests
 4 implicated in Rule 26. *See Burdette v. Steadfast Commons II, LLC*, Case No. C11-980-
 5 RSM, 2012 WL 3762515, *5 (W.D. Wash. Aug. 29, 2012); *Smith v. Ardew Wood Prods.*
 6 LTD., Case No. C07-5641-FDB, 2009 WL 2163131, *1 (W.D. Wash. July 20, 2009);
 7 *Edin v. The Paul Revere Life Ins. Co.*, 188 F.R.D. 543, 546 (D. Ariz. 1999).

8 Since the parties agree that the court should apply the seven-factor test, the court
 9 assumes, without deciding, that the seven-factor test applies to determine whether the
 10 expert's fee is reasonable.

11 Mr. Nault is qualified in his field of expertise of police practices. He spent 27.5
 12 years working in law enforcement and retired as the Commander of Major Crimes in the
 13 Criminal Investigation Division at the King County Sheriff's Department in 1994. Dkt. #
 14 98-2 at 5. Mr. Nault has a bachelor's degree in Police Science and Administration and
 15 Sociology/Speech, and a Master's Degree in Public Administration. *Id.* at 6. He has
 16 taught courses at Seattle University in various law enforcement topics, and consulted
 17 with the Department of Justice International Criminal Investigations Training Assistance
 18 Program. *Id.* Mr. Nault also commanded two serial murder investigations that led him to
 19 being invited by the FBI Behavioral Sciences Support unit to be a lecturer on serial
 20 murder and serial murder task force management for the period of 1989-1995. *Id.* at 5.
 21 Mr. Nault has worked as a police practices expert for both plaintiffs and defendants in
 22 twenty other state and federal court cases since 2005. *Id.* at 12-13.

23 Mr. Nault charges \$195 per hour for case assessment and a flat fee of \$2,500 per
 24 day for trial and depositions. Dkt. # 103 at 4. Defendants have directed the court to three
 25 police practices experts in the greater Seattle area: (1) James Pugel, defendants' police
 26 practices expert; (2) D.P. Van Blaricom, and (3) Norm Stamper. Mr. Pugel charges \$300
 27 per hour for review of documents and preparation of reports/testimony, and \$1,000 per

1 day for travel, depositions and testimony. Dkt. # 100-2 at 2. Mr. Blaricom charges an
 2 hourly rate of \$385 and a deposition minimum of \$2,000 per day. Dkt # 98-5 at 9. Mr.
 3 Stamper charges \$400 per hour for all work done on a case.¹ Plaintiff has not directed the
 4 court to any other police practices expert in the greater Seattle area or elsewhere.
 5 Although Mr. Nault's hourly rate appears to be below market, his flat rate of \$2,500 for
 6 depositions and trial testimony, appears to be above the market rate (with the exception
 7 of Mr. Stamper). Additionally, defendants deposed Mr. Nault for three hours and Mr.
 8 Nault spent one hour of travel time in connection with the deposition.

9 Considering all the relevant factors, the court finds that the flat rate deposition fee
 10 of \$2,500 for a three hour deposition is unreasonable. The court believes that \$2,000 for
 11 a full day of deposition including travel time would be reasonable for a police practices
 12 expert with Mr. Nault's experience, if the full day was actually spent in deposition or
 13 traveling to the deposition. A full day of deposition plus one hour of travel time would
 14 be approximately 8 hours in this case, which roughly results in a \$250 per hour rate. *See*
 15 Fed. R. Civ. Proc. 30(d)(1) ("Unless otherwise stipulated or ordered by the court, a
 16 deposition is limited to 1 day of 7 hours.").

17 For all the foregoing reasons, the court GRANTS defendants' motion for the
 18 reasons stated above. The court finds that a reasonable fee for Mr. Nault's deposition is
 19 \$1,000 given the three hours in deposition and one hour of travel time. Mr. Nault is
 20 ORDERED to refund \$1,500 to defendants within 14 days of this order.

21 Dated this 16th day of September, 2013.

22 
 23

24 The Honorable Richard A. Jones
 25 United States District Judge

26 _____
 27 ¹ Mr. Stamper does not have a flat fee for deposition or trial testimony, but the court
 notes that at his rate, a seven-hour full day of deposition would cost \$2,800.